

§ 25.2522(a)-1

26 CFR Ch. I (4-1-02 Edition)

which the specific exemption claimed and allowed in gift tax returns for prior calendar quarters and calendar years exceeds \$30,000 is includible in determining the aggregate sum of the taxable gifts for preceding calendar years and calendar quarters. See paragraph (b) of § 25.2504-1.

(2) With respect to gifts made before January 1, 1971, the amount by which the specific exemption claimed and allowed in gift tax returns for prior calendar years exceeds \$30,000 is includible in determining the aggregate sum of the taxable gifts for preceding calendar years. See paragraph (b) of § 25.2504-1.

[T.D. 7238, 37 FR 28732, Dec. 29, 1972]

§ 25.2522(a)-1 Charitable and similar gifts; citizens or residents.

(a) In determining the amount of taxable gifts for the “calendar period” (as defined in § 25.2502-1(c)(1)) there may be deducted, in the case of a donor who was a citizen or resident of the United States at the time the gifts were made, all gifts included in the “total amount of gifts” made by the donor during the calendar period (see section 2503 and the regulations thereunder) and made to or for the use of:

(1) The United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes.

(2) Any corporation, trust, community chest, fund, or foundation organized and operated exclusively for religious charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, if no part of the net earnings of the organization inures to the benefit of any private shareholder or individual, if it is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and if, in the case of gifts made after December 31, 1969, it does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

(3) A fraternal society, order, or association, operating under the lodge system, provided the gifts are to be used by the society, order or association ex-

clusively for one or more of the purposes set forth in subparagraph (2) of this paragraph.

(4) Any post or organization of war veterans or auxiliary unit or society thereof, if organized in the United States or any of its possessions, and if no part of its net earnings inures to the benefit of any private shareholder or individual.

The deduction is not limited to gifts for use within the United States, or to gifts to or for the use of domestic corporations, trusts, community chests, funds, or foundations, or fraternal societies, orders, or associations operating under the lodge system. An organization will not be considered to meet the requirements of subparagraph (2) of this paragraph, or of paragraph (b) (2) or (3) of this section, if such organization engages in any activity which would cause it to be classified as an “action” organization under paragraph (c)(3) of § 1.501(c)(3)-1 of this chapter (Income Tax Regulations). For the deductions for charitable and similar gifts made by a nonresident who was not a citizen of the United States at the time the gifts were made, see § 25.2522(b)-1. See §§ 25.2522(c)-1 and 25.2522(c)-2 for rules relating to the disallowance of deductions to trusts and organizations which engage in certain prohibited transactions or whose governing instruments do not contain certain specified requirements.

(b) The deduction under section 2522 is not allowed for a transfer to a corporation, trust, community chest, fund, or foundation unless the organization or trust meets the following four tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes.

(2) It must not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation.

(3) In the case of gifts made after December 31, 1969, it must not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) Its net earnings must not inure in whole or in part to the benefit of private shareholders or individuals other

than as legitimate objects of the exempt purposes.

For further limitations see § 25.2522(c)-1, relating to gifts to trusts and organizations which have engaged in a prohibited transaction described in section 681(b)(2) or section 503(c).

(c) In order to prove the right to the charitable, etc., deduction provided by section 2522 the donor must submit such data as may be requested by the Internal Revenue Service. As to the extent the deductions provided by this section are allowable, see section 2524.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7012, 34 FR 7691, May 15, 1969; T.D. 7238, 37 FR 28733, Dec. 29, 1972; T.D. 7318, 39 FR 25457, July 11, 1974; T.D. 7910, 48 FR 40375, Sept. 7, 1983; T.D. 8308, 55 FR 35594, Aug. 31, 1990]

§ 25.2522(a)-2 Transfers not exclusively for charitable, etc., purposes in the case of gifts made before August 1, 1969.

(a) *Remainders and similar interests.* If a trust is created or property is transferred for both a charitable and a private purpose, deduction may be taken of the value of the charitable beneficial interest only insofar as that interest is presently ascertainable, and hence severable from the noncharitable interest. The present value of a remainder or other deferred payment to be made for a charitable purpose is to be determined in accordance with the rules stated in § 25.2512-5. Thus, if money or property is placed in trust to pay the income to an individual during his life, or for a term of years, and then to pay the principal to a charitable organization, the present value of the remainder is deductible. If the interest involved is such that its value is to be determined by a special computation, see § 25.2512-5(d)(4). If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present value made in accordance with the principles set forth in the applicable paragraph of § 25.2512-5.

(b) *Transfers subject to a condition or a power.* If, as of the date of the gift, a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become ef-

fective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an estate or interest passes to or is vested in charity on the date of the gift and the estate or interest would be defeated by the performance of some act or the happening of some event, the occurrence of which appeared to have been highly improbable on the date of the gift, the deduction is allowable. If the donee or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so given by the donor, the deduction will be limited to that portion of the property or fund which is exempt from the exercise of the power. The deduction is not allowed in the case of a transfer in trust conveying to charity a present interest in income if by reason of all the conditions and circumstances surrounding the transfer it appears that the charity may not receive the beneficial enjoyment of the interest. For example, assume that assets placed in trust by the donor consists of stock in a corporation, the fiscal policies of which are controlled by the donor and his family, that the trustees and remaindermen are likewise members of the donor's family, and that the governing instrument contains no adequate guarantee of the requisite income to the charitable organization. Under such circumstances, no deduction will be allowed. Similarly, if the trustees are not members of the donor's family but have no power to sell or otherwise dispose of closely held stock, or otherwise insure the requisite enjoyment of income to the charitable organization, no deduction will be allowed.

(c) *Effective date.* This section applies only to gifts made before August 1, 1969. In the case of gifts made after July 31, 1969, see § 25.2522(c)-2.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958; 25 FR 14021 Dec. 31, 1960, as amended by T.D. 7318, 39 FR 25457, July 11, 1974; T.D. 8540, 59 FR 30177, June 10, 1994]